

**Subpart—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Research, Promotion and Education Programs**

SOURCE: 60 FR 37326, July 20, 1995, unless otherwise noted.

**§ 1200.50 Words in the singular form.**

Words in this subpart in the singular form shall be deemed to import the plural, and *vice versa*, as the case may demand.

**§ 1200.51 Definitions.**

As used in this subpart, the terms as defined in the acts shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Floral Research and Consumer Information Act [7 U.S.C. 4301-4319]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801-6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601-4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201-6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101-6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001-6013]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611-2627]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901-4916], the Egg Research and Consumer Information Act [7 U.S.C. 2701-2718], the Cotton Research and Promotion Act [7 U.S.C. 2101-2118], the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801-4819], the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301-6311], the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101-7111], the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501-4513], the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401-6417], and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401-3417].

(b) *Department* means the U.S. Department of Agriculture.

(c) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

(d) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(e) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated, or may hereafter be delegated, to act in the Administrator's stead.

(f) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(g) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(h) *Proceeding* means a proceeding before the Secretary arising under section 1957 of the Act.

(i) *Hearing* means that part of the proceedings which involves the submission of evidence.

(j) *Party* includes the U.S. Department of Agriculture.

(k) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(l) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties; and

(m) *Petition* includes an amended petition.

**§ 1200.52 Institution of proceeding.**

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that such order or any provision of such order or any obligation imposed in connection with an order is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stat-

ing that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the filing of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders. However, each reference to *marketing order* in the title shall mean *order*.

**PART 1205—COTTON RESEARCH AND PROMOTION**

**Subpart—Procedures for Conduct of Sign-up Period**

**DEFINITIONS**

Sec.